HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI C.V.NAGARJUNA REDDY

Writ Appeal No.1179 of 2006

Between:

Narayana and others.

… Appellants

AND

District Collector,
Adilabad District,
Adilabad and others.

… Respondents

:: JUDGMENT ::

Counsel for the appellants : Shri B.Vijaysen Reddy

Counsel for respondent Nos.1 to 3: Government Pleader for Revenue

Counsel for respondent No.4 : Shri S.M.Subhan

08-11-2006

Per G.S.Singhvi, CJ

This is an appeal for setting aside order dated 1.9.2006 passed by the learned Single Judge in Writ Petition

No.18162 of 2006, whereby he declined to entertain the appellants' prayer for quashing letter dated 20.4.2006 issued by District Collector, Adilabad (respondent No.1) to Mandal Revenue Officer, Bhainsa for taking possession of the wakf lands allegedly belonging to Jama Masjid of Bhainsa and directed them to avail remedy by filing application under Section 6 read with Section 83 of the Andhra Pradesh Wakf Act, 1995 (for short, 'the 1995 Act').

In the writ petition filed by them, the appellants questioned the communication issued by respondent No.1 by asserting that appellant No.1 became the owner of land measuring Ac.8-38 gts. comprised in Survey No.544/1 and appellant Nos.2 and 3 became owners of land measuring Ac.8-37 gts. comprised in Survey No.544/1 situated at Puspoor Village, Lokeswaram Mandal, Adilabad District by intestate succession as legal heirs of Linganna. The further assertion of the appellants was that they are agriculturists by profession and have been eking out their livelihood by cultivating the aforesaid lands. Still further, they claim that the land was in possession of their predecessor for last more than 50 years and by virtue of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short, 'the 1955 Act'), they have become entitled to grant of Occupancy Rights Certificates and the respondents cannot dispossess them. They disputed the contents of letter dated 20-4-2006 by asserting that the possession of the alleged wakf lands situated in Lokeshwaram and Kubeer Mandals of Adilabad District had not been taken by the concerned officers. In paragraphs 2, 3, 4 and 5 of his affidavit, appellant No.1 – Narayana averred as under:

> "2. The petitioner No.1 became the owner and possessor of land admeasuring Ac.8-38 gts. in Survey No.544/1 and the petitioners No.2 and 3 became owners and possessors of land admeasuring Ac.8-37 guntas in Survey No.544/1 situated at Puspoor Village, Lokeswaram Mandal, Adilabad District by intestate succession as legal representatives of late Linganna. All the petitioners are agriculturists by profession and had been eking out their livelihood by cultivating the aforesaid lands. The

petitioners and prior to them their family elders had been in continuous and uninterrupted possession of these lands since more than 50 years. The petitioners are being recorded as tenant in possession of these lands in all the revenue records for the past more than 40 years. These lands are classified as Inam lands. By virtue of Inam Abolition Act, 1955, the petitioners became entitled to grant of occupancy rights certificate. None of the revenue records indicate that these lands were wakf lands at any point of time. The revenue records consistently show that Smt.Fatima Bee and Smt.Liyaqat Bee are the Inamdar and the petitioners are possessors. In col.no.6 of pahanies, the nature of land is shown as mafi inam.

3) The petitioners were surprised to know that a letter bearing No.Wakf/Adb/9/87 dated 20th April 2006 has been issued by the first respondent to the Mandal Revenue Officer, Bhainsa directing him to deliver possession of various wakf lands to the Wakf Board team. Incidentally it is referred in the said letter that the teams of Wakf Board officials have taken over possession of alleged wakf lands in Lokeshwaram and Kubeer Mandals, which is factually incorrect. We came to know about the said letter through the office of the third respondent recently about one week back. We learnt on reliable information that Wakf Board officials have been falsely claiming to have taken possession of these lands. Now we apprehend that we will be dispossessed by the respondents highhandedly and illegally in the guise of some proceedings behind our back.

4) It is submitted that the proposed impugned action of the respondents seeking to dispossess us is illegal, arbitrary, unconstitutional and violative of the principles of natural justice. We categorically state that the lands in our possession are not wakf lands. It appears that the local Wakf Board officials have played mischief and reported these lands to be wakf lands. Neither the Wakf Board nor the revenue authorities has conducted any enquiry regarding the nature of the lands at any point of time. The revenue records consistently indicate that these lands are inam lands. So the question of the inam lands being wakf lands does not arise. We were not issued any notice before the impugned proceedings are initiated. Even if any alleged proceedings issued, the same are null and void as they are without any legal sanctity.

5) We are advised to state that even assuming that Wakf Board has got any interest in these lands, proper proceedings have to be initiated by following due process of law. The Wakf Board is an authority constituted under the Wakf Act, 1995 and certain powers are vested in it under the Act. In case the Wakf Board chooses to evict the petitioners, proper procedure under the Act should be followed by instituting appropriate proceedings before the Wakf Tribunal. The Wakf Board on its own cannot decide that these lands are wakf lands. When there is dispute, an adjudication has to be done by a competent authority and here in the instant case the Wakf Tribunal has to decide whether these lands are wakf lands or not. When our possession is uninterrupted and long standing for more than 40 years, it is understandable how all of a sudden these lands can become wakf lands. It appears that the revenue authorities are mechanically acting on the representations made by the wakf authorities. Unilaterally the respondents cannot come to the conclusion that these lands are wakf lands. Ourselves and our family members are entirely dependant on these lands, and we have been cultivating these lands since the time of our ancestors. If we are evicted from these lands, we will lose our livelihood. If interim directions as prayed for are not issued, we will suffer irreparable loss and injury. In similar circumstance, villagers of Sanghvi Village, Kubeer Mandal have approached the Hon'ble High Court and the Hon'ble High court in W.P.No.10676/06 and the Hon'ble High Court in W.P.M.P.No.13339/06, the Hon'ble High Court was pleased to grant interim direction to the respondents not to interfere with the peaceful possession over their lands. It is submitted that the petitioners filed writ petition No.13658/2006 for the same cause of action, but sincek there were several typographical errors with regard to name of the Mandal, the writ petition was withdrawn with a liberty to file fresh writ petition. The order dt.24-7-2006 is passed by this Hon'ble Court to that effect."

It appears that during the course of hearing, counsel for the parties brought to the notice of the learned Single Judge that the applications filed by the appellants for grant of Occupancy Rights Certificates under the 1955 Act were dismissed by Revenue Divisional Officer, Nirmal vide his order dated 21-11-2000 and the appeals preferred against that order were pending before Joint Collector, Adilabad.

The learned Single Judge took notice of the above mentioned facts including the one that the appeals filed against order dated 21-11-2000 passed by Revenue Divisional Officer, Nirmal were pending before Joint Collector, Adilabad, but dismissed the writ petition by recording the following observations:

> "It is the case of the petitioners that their claim under the Act for grant of ORC was dismissed and appeals are pending before the Joint Collector. Therefore, nothing prevented the petitioners from obtaining the orders from the appellate authority to protect their possession. Be that as it is, as on today, the petitioners have not been given any notice as alleged and merely basing on the copy of the letter statedly addressed by the first respondent to third respondent, the present writ petitions are filed. For these reasons, the writ petitions must be held as misconceived. Further, the learned Standing Counsel for A.P.State Wakf Board has placed before this Court a Xerox copy of panchanama conducted in the presence of the MRO, Lokeshwaram Mandal. A perusal of the same would show that insofar as the lands in Puspoor Village of Lokeshwaram Mandal are concerned, except the land in survey No.543, other lands have been taken possession under panchanama. The learned Counsel for A.P.State Wakf Board submits that those are endowed lands. In such background, the remedy of the petitioners is to approach the A.P.State Wakf Board and file application under Section 6 read with 83 of Wakf Act, 1955. It is also open to the petitioners to approach the Joint Collector, Adilabad, and obtain appropriate orders, if they are still in possession of the lands. Insofar as the petitioners in W.P.No.18152 of 2006 is concerned, this Court observes that unless and until the petitioners are given notice, they cannot be dispossessed if they are still in possession of the land. This order shall however be subject to any orders that may be passed by the Joint Collector, Adilabad, in the appeals filed by the petitioners under Section 24 of the Act."

Shri B. Vijaysen Reddy, learned counsel for the appellants argued that respondent No.1 does not have any jurisdiction to deal with the so-called wakf land and, in any case, the appellants cannot be deprived of their possession without following the procedure established by law. He further argued that during the pendency of the

appeals preferred against order dated
21-11-2000 passed by Revenue Divisional Officer, Nirmal, there can be no justification to dispossess the appellants.

Shri S.M. Subhan, learned counsel for the Wakf Board tried to convince us that even though the District Collector does not have the power, jurisdiction or authority under the 1995 Act to direct the Mandal Revenue Officer to take possession of the property in question, appropriate action in that regard can be taken under Section 54 of the 1995 Act. He submitted that the Court may dispose of the appeal by giving liberty to the Wakf Board to take action in accordance with law for securing possession of the wakf property.

In view of the above, the appeal is allowed. The order of the learned Single Judge is set aside. However, liberty is given to the competent authority to take action in accordance with law for securing possession of the land in dispute.

It is expected that the competent authority will take appropriate action in the matter within a period of four months after complying with the rules of natural justice and giving reasonable opportunity of hearing to the affected persons including the appellants. Till then, status quo in regard to possession of the lands in question shall be maintained by all the parties.

As a sequel to disposal of the appeal, WAMP.No.2447 of 2006 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

8.11.2006.

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